



OFFICE OF THE UNDER SECRETARY OF DEFENSE

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ACQUISITION AND
TECHNOLOGY

January 22, 1998

DP/CPF

MEMORANDUM, FOR ASSISTANT SECRETARY OF ARMY (RESEARCH, -DEVELOPMENT, &
ACQUISITION)
ASSISTANT SECRETARY OF NAVY (RESEARCH, DEVELOPMENT, &
ACQUISITION)
ASSISTANT SECRETARY OF AIR FORCE (ACQUISITION)
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY
COMMANDE-R, DEFENSE CONTRACT MANAGEMENT COMMAND

SUBJECT: Costs of Employee Stock Ownership Plans (ESOPs)

Section 844 of the Defense Authorization Act for 1998 expresses the "Sense of Congress" that the Department of Defense (DoD) should not disallow (1) interest costs associated with deferred compensation ESOPs incurred before January 1, 1994; and (2) costs related to ESOP debt, control premiums, or marketability discounts associated with the valuation of ESOP stock of closely held companies that were incurred before January 1, 1995.

To accommodate the Congressional desires expressed in this language, DoD components should not disallow ESOP interest costs that were included in an incurred cost submission prior to November 18, 1997 and were incurred before January 1, 1994, unless prior to January 1, 1994 an audit report was issued questioning the costs, a Form 1 was issued withholding payment of the costs, or a Contracting Officer rendered a decision stating the costs were unallowable. DoD components should, not disallow costs related to ESOP debt, control premiums, or marketability discounts associated with the valuation of ESOP stock of closely held companies that were included in an incurred cost submission prior to November 18, 1997 and were incurred before January 1, 1995, unless prior to January 1, 1995 an audit report was issued questioning the costs, a Form 1 was issued withholding payment of the costs, or a Contracting Officer rendered a decision stating the costs were unallowable.

In no event should this "Sense of Congress" language be interpreted as superseding any agreement already entered into between the Government and a contractor. If you have any questions on this matter, please contact Mr. David Capitano at (703)695-9764.

A handwritten signature in cursive script that reads "Eleanor R. Spector".

Eleanor R. Spector
Director, Defense Procurement